

IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF NORTH CAROLINA
1:19-cv-358

MAJOR BOYD WHITLEY,

Plaintiff,

v.

SHERIFF VAN SHAW, CAPTAIN M.
NESBITT, LIEUTENANT W.
WALLACE,

Defendants

**PLAINTIFF’S CONSENT MOTION
FOR SHORT EXTENSION OF
PRETRIAL FILING DEADLINES**

NOW COMES Plaintiff’s undersigned counsel¹ pursuant to Rule 6(b) of the Federal Rules of Civil Procedure, and moves the Court for a short extension of the schedule within which various pretrial filings are due. Such schedule was originally set by the Court’s Notice of Hearing entered September 20, 2021 (Doc. 37).

In support of this Motion, Plaintiff shows as follows:

1. On September 20, 2021, this Court set this matter for jury trial on March 7, 2022 and set the following pretrial filing deadlines:

a. Pretrial disclosures due February 4, 2022.

¹ **Plaintiff has not yet consented to the undersigned serving as his counsel**, but the undersigned is making reasonable efforts to obtain Plaintiff’s consent. For example, the individual who handles legal visitation at Plaintiff’s current correctional institution was unavailable to speak with when contacted today and the undersigned’s office was directed to try again on Friday, February 11, 2022. The undersigned is attempting contact with Plaintiff via telephone, videoconference, and in-person visitation, all of which require some cooperation from his current correctional institution.

- b. Motions in limine due February 11, 2022.
 - c. Responses to motions in limine and objections to pretrial disclosures due February 18, 2022.
 - d. Trial brief and jury instructions due February 14, 2022.
2. Defendants timely filed their pretrial disclosures on February 4, 2022 (Doc. 44).
3. Plaintiff, proceeding pro se, has not yet filed his pretrial disclosures and it is unclear to the undersigned whether they may be on their way to the Court in the mail.
4. On Tuesday, February 8, 2022, at 10:00 a.m., a pretrial settlement conference was held without the involvement of the undersigned. (Doc. 40; Minute Entry 2/8/2022).
5. On Tuesday, February 8, 2022 at 3:27 p.m., the Clerk of Court emailed the undersigned to request voluntary representation of Plaintiff, pro bono, through the Pro Bono Representation Program of the Middle District of North Carolina.
6. After clearing conflicts, the undersigned informed the Clerk of Court on Wednesday, February 9, 2022 at 12:46 p.m. of his willingness to serve as Plaintiff's attorney for purposes of trial.
7. Also on Wednesday, February 9, 2022 at 10:00 a.m. the undersigned emailed Defendants' counsel to inquire about a short extension of time to permit preparation of the appropriate pretrial filings on Plaintiff's behalf.

8. The undersigned and Defendants' counsel met via videoconference today, Thursday, February 10, 2022 beginning at 4:00 p.m. to discuss pretrial matters, case status, and the requested extension of time.

9. Defendants' counsel has consented to the short extensions of time set forth below. The intent of the undersigned (and his understanding of the intent of all counsel) is to permit adequate time for counsel to prepare pretrial filings for their respective clients without undue prejudice to any party, while also permitting the Court sufficient time to review the parties' submissions before the final pretrial conference set for Wednesday, February 23, 2022 at 10:00 a.m. (Doc. 42).

10. As the undersigned had not been contacted by the Clerk of Court at the time Plaintiff's pretrial disclosures were due, the undersigned believes that "excusable neglect" within the meaning of Federal Rule of Civil Procedure 6(b)(1)(B) exists. *See also* Fed. R. Civ. P. 1 (requiring construction of the Rules of Civil Procedure to secure justice in every action and proceeding).

11. The undersigned in good faith requires additional time to prepare Plaintiff's pretrial submissions.

WHEREFORE, Plaintiff's counsel respectfully requests that the Court enter an order extending the time for pretrial submissions so that they are due on the following schedule:

- a. Wednesday, February 16, 2022
 - i. Plaintiff's pretrial disclosures due.
 - ii. Motions in limine due.
 - iii. Agreed (see Doc. 37) or separate jury instructions due.
 - iv. Trial briefs due.
- b. Monday, February 21, 2022
 - i. Objections to pretrial disclosures due.
 - ii. Responses to motions in limine due.

Respectfully submitted, this the 10th day of February, 2022.

/s/ Daniel F. E. Smith
Daniel F. E. Smith
NC State Bar No.: 41601
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*Attorney for Plaintiff Pursuant to
Pro Bono Representation Program*

OF COUNSEL:

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing **PLAINTIFF'S CONSENT MOTION FOR SHORT EXTENSION OF PRETRIAL FILING DEADLINES** with the Clerk of Court using the CM/ECF system, which sends notification of such filing to all counsel of record so registered for this case.

This the 10th day of February, 2022.

/s/ Daniel F. E. Smith
Daniel F. E. Smith